

RETAINAGE ESCROW AGREEMENT

This RETAINAGE ESCROW AGREEMENT made and entered into this _____ day of _____, 2014, by and between the following parties:

Layne Heavy Civil, Inc.

(herein called "CONTRACTOR"),

City of West Lafayette Board of Public Works and Safety

(herein called "OWNER"), and

Lafayette Bank & Trust Co.

(herein called "ESCROW AGENT").

RECITALS

1. CONTRACTOR and OWNER have entered into a contract, dated August 19, 2014, for the construction of a public improvement, namely: 2014 Wastewater Treatment Plant Projects: Area 1 – Wet-Weather Facility Improvements / Area 2 – Phosphorus Removal-Phase 1.
2. The Contract provides for retainage as follows:
 - a. That the Owner shall retain ten percent (10%) of the amount of each payment until final completion and acceptance of all work covered by the Contract Documents; or
 - b. The Owner at any time, however, after fifty percent (50%) of the Work has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five percent (5%) on the current and remaining estimates. When the Work is substantially complete, the retained amount may be further reduced below five percent (5%) to only that amount necessary to assure completion.
3. The OWNER and the CONTRACTOR desire to provide for the deposit of the Retainage in an escrow account with the ESCROW AGENT pursuant to the RETAINAGE ESCROW AGREEMENT (AGREEMENT) and the provisions of the Indiana Code of 1971, Section 5-16-5.5-3, and the ESCROW AGENT is willing to accept deposits for such Retainage to be held pursuant to this AGREEMENT.


AGREEMENT

1. At the time of each progress payment to the CONTRACTOR, OWNER shall deposit into the Retainage account with ESCROW AGENT ten percent (10%) of the amount of each payment, or, five percent (5%) of the amount of each payment, as is appropriate as determined from Paragraph 2 of the "RECITALS" portion of this AGREEMENT, which payments shall constitute the Escrow Principal.


2. ESCROW AGENT may invest and reinvest the Escrow Principal and any income therefrom in any obligation eligible generally under the laws of the State of Indiana for investment of funds held by a Trustee, including its own obligations. In making such investments to the ESCROW, AGENT shall take into account any information supplied by CONTRACTOR or OWNER concerning the time or times when such Escrow Principal and income will be paid out by the ESCROW AGENT and shall endeavor to earn a maximum return on the funds consistent with security of the fund and the period of investment.
3. ESCROW AGENT shall pay over such portions of Escrow Principal to such person or persons and at such time or times as shall be specified in a joint notice in writing signed by CONTRACTOR and OWNER. In addition, the same portion of the Net Escrow Income (meaning thereby the value of all property then held in escrow less fees payable to ESCROW AGENT and less the total dollar amount of Escrow Principal not therefore paid out) shall be paid over to such person or persons by the ESCROW AGENT.
4. In the absence of such joint notice, the ESCROW AGENT shall payout the Escrow Principal and Escrow Income to such person or persons and in such amounts as shall be directed in the decree of judgment of a court having jurisdiction of the parties rendered in an action establishing the right of the parties and to which OWNER, the CONTRACTOR and the ESCROW AGENT are parties.
5. The ESCROW AGENT shall receive a fee for its services payable out of the Escrow Income in the amount of N/A per annum.
6. Any notice required to be given by the CONTRACTOR or the OWNER shall be valid and binding if in writing and signed by Dale Fleenor, Project Manager of Layne Heavy Civil, Inc. in the case of the CONTRACTOR, and Judy Rhodes, Clerk Treasurer; Heather Kidwell, Accounting II; Nicole Stocks, Accounting III in the case of the OWNER, or his/her successor. Any party may designate in writing to the ESCROW AGENT other persons to execute notices in its behalf under this AGREEMENT. The ESCROW AGENT may rely on the continuing authority of the above named persons and any others whose authority is certified to it by the notice parties until such time as the ESCROW AGENT shall receive notice in writing to the contrary from the appropriate Party.
7. This AGREEMENT constitutes the entire understanding between the parties regarding the deposit of Retainage in escrow and the duties of the ESCROW AGENT with respect to the investment and payment of ESCROW Principal and ESCROW Income. This AGREEMENT, however, is not a part of the Construction Contract between OWNER and CONTRACTOR, and nothing done or performed hereunder by any party shall be construed to prejudice or limit any rights which either party may have against the other party arising out of the said Construction Contract.

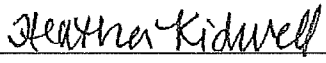
8. The ESCROW AGENT shall not be liable to the owner or to the CONTRACTOR for any loss or damage not caused by the negligence of willful misconduct of the ESCROW AGENT.

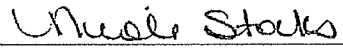
"CONTRACTOR": Layne Heavy Civil, Inc.

BY 
Dale Fleenor, Project Manager

"OWNER": City of West Lafayette

BY 
Judy Rhodes, Clerk-Treasurer

BY 
Heather Kidwell, Accounting II

BY 
Nicole Stocks, Accounting III

"ESCROW AGENT": Lafayette Bank & Trust

BY _____
Authorized Representative